IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

WP(C).No. 17994 of 2007(P)

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CC.35/2001 of ENQUIRY COMMR.& SPL.JUDGE,THRISSUR

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PETITIONER:

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M.D.THOMAS, S/O.LATE MR.DEVASIA,
AGED 55 YEARS, MULLORAKAM HOUSE, NADACKAL P.O.,
ERATTUPETTA.

BY ADV. SRI.RAJU K.MATHEWS
SRI.P.B.ASOKAN

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY ITS
SECRETARY TO GOVERNMENT HOME DEPARTMENT,
THIRUVANANTHAPURAM.

2. THE DEPUTY SUPERINTENDENT OF POLICE,
VIGILANCE AND ANTI-CORRUPTION BUREAU, IDUKKI,
THODUPUZHA.

3. MATHEW MANTHARA, ADVOCATE,
KOZHUVANAL P.O., MEENACHIL TALUK.

4. JOE MATHEW, PUTHENPEDUCKAYIL HOUSE,
ELAMKADU, KOOTIKAL, KOTTAYAM DISTRICT.

5. S.ASOKAN, ADVOCATE, THODUPUZHA.

R1 & 2 BY GOVT. PLEADER SRI. GIKKU JACOB

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**R. BASANT, J.**

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**W.P.(c) NO. 17994 OF 2007-P**

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Dated this the 31st day of July, 2007

**JUDGMENT**

The petitioner is the 22nd accused subsequently arrayed in C.C.No.35/01 pending before the Enquiry Commissioner and Special Judge (Vigilance), Thrissur. The said prosecution is under the provisions of the Prevention of Corruption Act, 1988. At the crime stage, the petitioner herein was on the array of accused as the 6th accused. When the final report was filed, he was deleted from the array of accused. The trial in the case had alleged commenced. P.Ws.1 to 4 were examined and some documents were marked at that stage. Ext.P3A order was passed by the Government. By Ext.P3A order, the 5th respondent herein, who was the then Government Pleader and Public Prosecutor, Idukki, was authorised to conduct the trial in C.C.No.35/01. The petitioner challenges Ext.P3A order.

2. After the 5th respondent started conducting

C.C.No.35/01, there was a prayer for conduct of further investigation. The same was allowed. Further investigation was conducted and further report was filed thereafter. Inter alia, the petitioner herein was arrayed as 22nd accused. The trial continued. Ext.P3A was not challenged at that stage. The 5th respondent ceased to be the District Government Pleader and the Public Prosecutor with effect from 29/9/06. Thereafter, the Government passed Ext.P5 order dated 19/1/07 wherein the 5th respondent was appointed as Special Public Prosecutor under Sec.24(8) of the Cr.P.C. to complete the conduct of the prosecution in C.C.No.35/01. The petitioner claims to be aggrieved by Ext.P5 order also. Thus, the petitioner now in this case challenges before me Ext.P3A order as also Ext.P5 order.

3. What is the grievance against Ext.P3(a) order. First of all, it is contended that there was no sufficient reason to appoint any Special Prosecutor for the conduct of C.C.No.35/01. Another Prosecutor – Additional Legal Advisor of the Vigilance Department was conducting the said prosecution and it was absolutely unnecessary to have appointed the 5th respondent as Special Prosecutor under Ext.P3A. This is the first contention raised.

4. I must first of all note that Ext.P3A is not an order

appointing a Special Prosecutor under Sec.24(8) of the Cr.P.C. It was only an order authorising the District Government Pleader and the Public Prosecutor to conduct the trial of C.C.No.35/01. Under Sec.24 of the Cr.P.C., a Public Prosecutor is appointed for the District and needless to say, all criminal cases in the District can be conducted by the Public Prosecutor appointed under Sec.24 of the Cr.P.C. on behalf of the Government. It is not necessary strictly to further appoint the District Public Prosecutor as the Special Prosecutor as the incumbent in the office of the District Public Prosecutor can in his own right to conduct a prosecution in his District on behalf of the Government before the Special Court under the P.C. Act. There is no provision anywhere in the Code or the P.C. Act which proscribes the appearance of the Public Prosecutor appointed under Sec.24 of the Cr.P.C. on behalf of the Government in a prosecution pending before the Special Judge under the P.C. Act.

5. Sec.5(3) of the P.C. Act only stipulates that the person conducting the prosecution before a Special Judge shall be deemed to be a Public Prosecutor. In the instant case, even without the help of such a deeming provision, the Public Prosecutor was himself conducting the prosecution before the Special Judge and the mere fact that Ext.P3A order has been

passed to clarify the position does not, in any way, militate against the competence of the Public Prosecutor to conduct the prosecution before the Special Judge. The first contention raised must therefore fail.

6. The next contention raised against Ext.P3A is that there was no special reason to authorise the Public Prosecutor to conduct the prosecution before the Special Judge. I must remind myself that it was not a case of appointment of a Special Prosecutor in which event reasons must be looked into. Ext.P3A order, as stated earlier, is only a clarification or specific authorisation for the Prosecutor to appear before the Special Judge under the P.C. Act in the case in question. It is unnecessary to look for special reasons to justify the authorisation given to the District Public Prosecutor to appear and conduct the case before the Special Judge. Even without any such special authorisation the same could have been done. Ext.P3A is only by way of abundant caution and clarification and, in these circumstances, want of such special reasons cannot vitiate Ext.P3A.

7. That takes me to the challenge against Ext.P5 order. By the time Ext.P5 order was passed the 5th respondent has ceased to be the District Public Prosecutor. He could not continue to

appear in the case. He was appearing and conducting the case case essentially because of his status as a District Public Prosecutor and of course the authorisation given under Ext.P3A for further clarification. It is, in these circumstances, that Ext.P5 order was passed.

8. There is no contention that the 5th respondent is incompetent to be appointed as a Special Prosecutor. Ext.P5 order is obviously passed under Sec.24(8) Cr.P.C. That person was conducting the case in his capacity as a Public Prosecutor as also in view of the clarification under Ext.P3A. The trial had not completed. The Government, at this juncture, wanted the case to be continued to be prosecuted by the 5th respondent. He was the District Public Prosecutor. He was, it was clarified, entitled to conduct the prosecution under Ext.P3A. In directing that the 5th respondent must continue to conduct the prosecution even after he ceased to be the Prosecutor the Government cannot be said to have committed any error which warrants interference by invocation of the jurisdiction under Art.226 of the Constitution. A person, who was conducting the prosecution, which prosecution was half way through, was appointed as Special Prosecutor to enable him to complete and conclude the trial. I am unable to find anything in Ext.P5 appointment of the Special

Prosecutor which can justify the invocation of the jurisdiction under Art.226 of the Constitution.

9. There is an attempt to contend that the appointment is mala fide. It is contended that the 4th respondent, who has nothing to do with the case, has been instrumental in ensuring that the 5th respondent is appointed as a Prosecutor. The petitioner has a further personal grievance that it is after the 5th respondent stepped into the shoes of the Additional Legal Advisor to the Vigilance Department who was conducting the case till then that a further investigation was ordered to be conducted and the petitioner arrayed as an accused. These, according to me, cannot be reckoned as circumstances suggestive of the existence of any mala fide. The special reason for appointment of the 5th respondent as Special Prosecutor under Ext.P5 is that he was conducting the prosecution in his capacity earlier as the District Public Prosecutor as explained in Ext.P3A and the trial was half way through and incomplete. That reason, it appears to me, is eminently sufficient to justify Ext.P5 order under which the Prosecutor who was conducting the case till then was permitted to complete the prosecution.

10. The learned counsel for the petitioner submits that the 5th respondent had earlier appeared in a civil case for the 3rd

respondent with whom the petitioner had some civil disputes. Ext.P2 judgment was rendered in that dispute by the Munsiff's Court, Devikulam, it is submitted. What is the role of the 3rd respondent in the present prosecution? He does not have any crucial or specific role in the prosecution under the P.C. Act. The mere fact that the 5th respondent had appeared in the civil suit against the interests of the petitioner herein is again no sufficient circumstance to conclude mala fides in the appointment of the 5th respondent. The mere fact that the 5th respondent had so appeared in the civil litigation which was disposed of by Ext.P2 judgment for non-prosecution is, according to me, no sufficient ground to choose interfere with Ext.P3A order or P5 order under Sec.482 of the Cr.P.C.

11. No other contentions are raised.

12. This writ petition is, in these circumstances, dismissed.

Sd/-

**(R. BASANT, JUDGE)**

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